

WILLIAM PETERSON ET AL.

IBLA 88-275

Decided January 26, 1990

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the WPA 616 and WPA 619 mining claims null and void ab initio in part. CA MC 190621 and CA MC 190624.

Affirmed.

1. Act of November 9, 1921--Mining Claims: Lands Subject to--Rights-of-Way: Federal Highway Act

Those portions of mining claims located on land subject to a valid, ongoing, and pre-existing highway right-of-way granted to the State of California pursuant to the Federal Aid Highway Act, 23 U.S.C. § 317 (1982), are null and void ab initio.

2. Mining Claims: Placer Claims

Pursuant to 30 U.S.C. § 36 (1982) and 43 CFR 3842.1-3, placer mine locations may not contain noncontiguous tracts of land.

APPEARANCES: William Peterson, Victorville, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE KELLY

William Peterson, Carolyn Peterson, Herman Peterson, Evelyn Peterson, Sandra Peterson, Harold Allen, Ronald Chambress, and Virginia Allen appeal a January 27, 1988, decision by the California State Office, Bureau of Land Management (BLM), declaring the WPA 616 and WPA 619 placer mining claims 1/ null and void ab initio in part. 2/

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1/ The notices of location for WPA 616 and WPA 619 were filed with BLM on Apr. 28, 1987, and assigned claim numbers CA MC 190621 and CA MC 190624, respectively. Both notices report the date of location as Mar. 23, 1987. WPA 616 describes the NE¼, sec. 4, T. 9 N., R. 6 W., San Bernardino Meridian, San Bernardino County, California. WPA 619 describes the SE¼, sec. 4, T. 9 N., R. 6 W., San Bernardino Meridian, San Bernardino County, California. Both notices of location list the appellants as locators, with the exception that in both, "C. Uli" is listed instead of Virginia Allen.

2/ The same decision also declared null and void ab initio the WPA 266 placer claim; however, the BLM decision as it relates to WPA 266 is not appealed.

The BLM decision explains that a strip of land through the parcels described in the location notices was appropriated and transferred to the State of California, Department of Transportation, for a Federal Aid Highway pursuant to 23 U.S.C. § 317 (1982). The decision then indicates that such land is not subject to mining location and entry; thus, the claims are null and void ab initio as to the appropriated land. BLM continues by explaining that because the notices of location are null and void ab initio as to the highway right-of-way, each of appellants' notices of location describes two noncontiguous parcels of land, which is prohibited by 43 CFR 3842.1-3.

Appellants' statement of reasons (SOR) consists of the following: "The claimants believe the Bureau has incorrectly determined that the property which makes up the claim consists of non-contiguous tracts or parcels. Claimants contend the land is contiguous, the highway right-of-way notwithstanding" (SOR at 1). No explanation, evidence, or analysis supporting this contention is submitted.

[1] It is well established that material sites which have been appropriated and transferred to states pursuant to 23 U.S.C. § 317 (1982) are closed to mineral entry. Russell Avery, 99 IBLA 22 (1987); Ralph Memmott, 61 IBLA 116 (1982); Sam D. Rawson, 61 I.D. 255 (1953). Appellants do not dispute that the same rule applies to land appropriated and transferred for use as a highway right-of-way pursuant to the same authority. Thus, BLM correctly declared appellants' notices of location null and void ab initio to the extent they include land within the highway right-of-way.

[2] It is also clear that a single notice of location cannot apply to noncontiguous parcels of land. 30 U.S.C. § 36 (1982); 43 CFR 3842.1-3; W.G. Singleton, 75 IBLA 168 (1983); Charles House, 33 IBLA 308 (1978). Although appellants contend that the land described in their notices of location is contiguous, the record does not support this contention. The master title plat clearly depicts the highway right-of-way within the borders of appellants' claims. Appellants have given us no reason to doubt the accuracy of the master title plat.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision of January 27, 1988, is affirmed.

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John H. Kelly  
Administrative Judge

I concur:

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Gail M. Frazier  
Administrative Judge